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18 VITAMIN SHOPPE INDUSTRIES LLC

19 UNITED STATES DISTRICT COURT
20 CENTRAL DISTRICT OF CALIFORNIA

21 JOYCETTE GOODWIN, an individual,
22 on behalf of herself, all others similarly
23 situated, and the general public,

24 Plaintiff,

25 v.

26 VITAMIN SHOPPE INDUSTRIES,
27 LLC, dba THE VITAMIN SHOPPE, a
28 New York Limited Liability Company,

Defendant.

Case No.: 2:22-cv-04039-JFW-MAR

Honorable John F. Walter

**STIPULATED PROTECTIVE
ORDER**

1 1. INTRODUCTION

2 1.1 PURPOSES AND LIMITATIONS

3 Discovery in this action is likely to involve production of confidential,
4 proprietary, or private information for which special protection from public
5 disclosure and from use for any purpose other than prosecuting this litigation may
6 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
7 enter the following Stipulated Protective Order. The parties acknowledge that this
8 Order does not confer blanket protections on all disclosures or responses to
9 discovery and that the protection it affords from public disclosure and use extends
10 only to the limited information or items that are entitled to confidential treatment
11 under the applicable legal principles. The parties further acknowledge, as set forth
12 in Section 12.3, below, that this Stipulated Protective Order does not entitle them
13 to file confidential information under seal; Civil Local Rule 79-5 sets forth the
14 procedures that must be followed and the standards that will be applied when a
15 party seeks permission from the court to file material under seal.

16 1.2 GOOD CAUSE STATEMENT

17 This action is likely to involve confidential information, including trade
18 secrets and customer and pricing lists, and other valuable research, development,
19 commercial, financial, technical and/or proprietary information for which special
20 protection from public disclosure and from use for any purpose other than
21 prosecution of this action is warranted. Such confidential and proprietary materials
22 and information consist of, among other things, confidential business or financial
23 information, information regarding confidential business practices, or other
24 confidential research, development, or commercial information (including
25 information implicating privacy rights of third parties), information otherwise
26 generally unavailable to the public, or which may be privileged or otherwise
27 protected from disclosure under state or federal statutes, court rules, case decisions,
28 or common law. Accordingly, to expedite the flow of information, to facilitate the

prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and serve the ends of justice, a protective order for such information is justified in this matter. It is the intent of the parties that information will not be designated as confidential for tactical reasons and that nothing be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, and there is good cause why it should not be part of the public record of this case.

2. DEFINITIONS

2.1 Action: *Goodwin v. Vitamin Shoppe Industries LLC, dba the Vitamin Shoppe*, Case No.: 2:22-cv-04039-JFW-MAR (C.D. Cal.).

2.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

1 2.7 Expert: a person with specialized knowledge or experience in a
2 matter pertinent to the litigation who has been retained by a Party or its counsel to
3 serve as an expert witness or as a consultant in this Action.

4 2.8 House Counsel: attorneys who are employees of a party to this
5 Action. House Counsel does not include Outside Counsel of Record or any other
6 outside counsel.

7 2.9 Non-Party: any natural person, partnership, corporation, association,
8 or other legal entity not named as a Party to this action.

9 2.10 Outside Counsel of Record: attorneys who are not employees of a
10 party to this Action but are retained to represent or advise a party to this Action
11 and have appeared in this Action on behalf of that party or are affiliated with a law
12 firm which has appeared on behalf of that party, and includes support staff.

13 2.11 Party: any party to this Action, including all of its officers, directors,
14 employees, consultants, retained experts, and Outside Counsel of Record (and their
15 support staffs).

16 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
17 Discovery Material in this Action.

18 2.13 Professional Vendors: persons or entities that provide litigation
19 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
20 demonstrations, and organizing, storing, or retrieving data in any form or medium)
21 and their employees and subcontractors.

22 2.14 Protected Material: any Disclosure or Discovery Material that is
23 designated as "CONFIDENTIAL."

24 2.15 Receiving Party: a Party that receives Disclosure or Discovery
25 Material from a Producing Party.

26 3. SCOPE

27 The protections conferred by this Stipulation and Order cover not only
28 Protected Material (as defined above), but also (1) any information copied or

1 extracted from Protected Material; (2) all copies, excerpts, summaries, or
 2 compilations of Protected Material; and (3) any testimony, conversations, or
 3 presentations by Parties or their Counsel that might reveal Protected Material. Any
 4 use of Protected Material at trial will be governed by the orders of the trial judge.
 5 This Order does not govern the use of Protected Material at trial.

6 4. DURATION

7 Even after final disposition of this litigation, the confidentiality obligations
 8 imposed by this Order will remain in effect until a Designating Party agrees
 9 otherwise in writing or a court order otherwise directs. Final disposition will be
 10 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
 11 with or without prejudice; and (2) final judgment herein after the completion and
 12 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
 13 including the time limits for filing any motions or applications for extension of
 14 time pursuant to applicable law.

15 5. DESIGNATING PROTECTED MATERIAL

16 5.1 Exercise of Restraint and Care in Designating Material for Protection.

17 Each Party or Non-Party that designates information or items for protection under
 18 this Order must take care to limit any such designation to specific material that
 19 qualifies under the appropriate standards. The Designating Party must designate for
 20 protection only those parts of material, documents, items, or oral or written
 21 communications that qualify so that other portions of the material, documents,
 22 items, or communications for which protection is not warranted are not swept
 23 unjustifiably within the ambit of this Order.

24 Mass, indiscriminate, or routinized designations are prohibited. Designations
 25 that are shown to be clearly unjustified or that have been made for an improper
 26 purpose (e.g., to unnecessarily encumber the case development process or to
 27 impose
 28

unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the inapplicable designation

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

A Party or Non-Party that makes original documents available for inspection need not designate them for protection until after the inspecting Party has indicated which documents it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection will be deemed "CONFIDENTIAL." After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the "CONFIDENTIAL legend" to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the

1 Producing Party also must clearly identify the protected portion(s) (e.g., by making
2 appropriate markings in the margins).

3 (b) for testimony given in depositions that the Designating Party identify the
4 Disclosure or Discovery Material on the record, before the close of the deposition
5 all protected testimony.

6 (c) for information produced in some form other than documentary and for
7 any other tangible items, that the Producing Party affix in a prominent place on the
8 exterior of the container or containers in which the information is stored the legend
9 “CONFIDENTIAL.” If only a portion or portions of the information warrants
10 protection, the Producing Party, to the extent practicable, will identify the
11 protected portion(s).

12 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
13 failure to designate qualified information or items does not, standing alone, waive
14 the Designating Party’s right to secure protection under this Order for such
15 material. Upon timely correction of a designation, the Receiving Party must make
16 reasonable efforts to assure that the material is treated in accordance with the
17 provisions of this Order.

18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
20 designation of confidentiality at any time that is consistent with the Court’s
21 Scheduling Order.

22 6.2 Meet and Confer. The Challenging Party will initiate the dispute
23 resolution process under Local Rule 37.1 et seq.

24 6.3 The burden of persuasion in any such challenge proceeding will be on
25 the Designating Party. Frivolous challenges, and those made for an improper
26 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
27 parties) may expose the Challenging Party to sanctions. Unless the Designating
28 Party has waived or withdrawn the confidentiality designation, all parties will

1 continue to afford the material in question the level of protection to which it is
 2 entitled under the Producing Party's designation until the Court rules on the
 3 challenge.

4 7. ACCESS TO AND USE OF PROTECTED MATERIAL

5 7.1 Basic Principles. A Receiving Party may use Protected Material that is
 6 disclosed or produced by another Party or by a Non-Party in connection with this
 7 Action only for prosecuting, defending, or attempting to settle this Action. Such
 8 Protected Material may be disclosed only to the categories of persons and under the
 9 conditions described in this Order. When the Action has been terminated, a
 10 Receiving Party must comply with the provisions of section 13 below (FINAL
 11 DISPOSITION).

12 Protected Material must be stored and maintained by a Receiving Party at a
 13 location and in a secure manner that ensures that access is limited to the persons
 14 authorized under this Order.

15 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
 16 otherwise ordered by the court or permitted in writing by the Designating Party, a
 17 Receiving Party may disclose any information or item designated
 18 "CONFIDENTIAL" only to:

19 (a) the Receiving Party's Outside Counsel of Record in this Action, as well
 20 as employees of said Outside Counsel of Record to whom it is reasonably
 21 necessary to disclose the information for this Action;

22 (b) the officers, directors, and employees (including House Counsel) of the
 23 Receiving Party to whom disclosure is reasonably necessary for this Action;

24 (c) Experts (as defined in this Order) of the Receiving Party to whom
 25 disclosure is reasonably necessary for this Action and who have signed the
 26 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

27 (d) the Court and its personnel;

28 (e) court reporters and their staff;

1 (f) professional jury or trial consultants, mock jurors, and Professional
 2 Vendors to whom disclosure is reasonably necessary for this Action and who have
 3 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (g) the author or recipient of a document containing the information or a
 5 custodian or other person who otherwise possessed or knew the information;

6 (h) during their depositions, witnesses, and attorneys for witnesses, in the
 7 Action to whom disclosure is reasonably necessary provided: (1) the deposing
 8 party requests that the witness sign the form attached as Exhibit A hereto; and (2)
 9 they will not be permitted to keep any confidential information unless they sign the
 10 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
 11 agreed by the Designating Party or ordered by the court. Pages of transcribed
 12 deposition testimony or exhibits to depositions that reveal Protected Material may
 13 be separately bound by the court reporter and may not be disclosed to anyone
 14 except as permitted under this Stipulated Protective Order; and

15 (i) any mediator or settlement officer, and their supporting personnel,
 16 mutually agreed upon by any of the parties engaged in settlement discussions.

17 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
 18 IN OTHER LITIGATION

19 If a Party is served with a subpoena or a court order issued in other litigation
 20 that compels disclosure of any information or items designated in this Action as
 21 “CONFIDENTIAL,” that Party must:

22 (a) promptly notify in writing the Designating Party. Such notification will
 23 include a copy of the subpoena or court order;

24 (b) promptly notify in writing the party who caused the subpoena or order to
 25 issue in the other litigation that some or all of the material covered by the subpoena
 26 or order is subject to this Protective Order. Such notification will include a copy of
 27 this Stipulated Protective Order; and
 28

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected. If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order will not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party will bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party will:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure

1 of a communication or information covered by the attorney-client privilege or
 2 work product protection, the parties may incorporate their agreement in the
 3 stipulated protective order submitted to the court.

4 12. MISCELLANEOUS

5 12.1 Right to Further Relief. Nothing in this Order abridges the right of
 6 any person to seek its modification by the Court in the future.

7 12.2 Right to Assert Other Objections. By stipulating to the entry of this
 8 Protective Order no Party waives any right it otherwise would have to object to
 9 disclosing or producing any information or item on any ground not addressed in
 10 this Stipulated Protective Order. Similarly, no Party waives any right to object on
 11 any ground to use in evidence of any of the material covered by this Protective
 12 Order.

13 12.3 Filing Protected Material. A Party that seeks to file under seal any
 14 Protected Material must comply with Civil Local Rule 79-5. Protected Material
 15 may only be filed under seal pursuant to a court order authorizing the sealing of the
 16 specific Protected Material at issue. If a Party's request to file Protected Material
 17 under seal is denied by the court, then the Receiving Party may file the information
 18 in the public record unless otherwise instructed by the court.

19 13. FINAL DISPOSITION

20 After the final disposition of this Action, as defined in paragraph 4, within
 21 60 days of a written request by the Designating Party, each Receiving Party must
 22 return all Protected Material to the Producing Party or destroy such material. As
 23 used in this subdivision, "all Protected Material" includes all copies, abstracts,
 24 compilations, summaries, and any other format reproducing or capturing any of the
 25 Protected Material. Whether the Protected Material is returned or destroyed, the
 26 Receiving Party must submit a written certification to the Producing Party (and, if
 27 not the same person or entity, to the Designating Party) by the 60 day deadline that
 28 (1) identifies (by category, where appropriate) all the Protected Material that was

1 returned or destroyed and (2) affirms that the Receiving Party has not retained any
 2 copies, abstracts, compilations, summaries or any other format reproducing or
 3 capturing any of the Protected Material. Notwithstanding this provision, Counsel
 4 are entitled to retain an archival copy of all pleadings, motion papers, trial,
 5 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
 6 and trial exhibits, expert reports, attorney work product, and consultant and expert
 7 work product, even if such materials contain Protected Material. Any such archival
 8 copies that contain or constitute Protected Material remain subject to this
 9 Protective Order as set forth in Section 4 (DURATION).

10 14. Any willful violation of this Order may be punished by civil or criminal
 11 contempt proceedings, financial or evidentiary sanctions, reference to disciplinary
 12 authorities, or other appropriate action at the discretion of the Court.

13 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
 14
 15

16 Dated: August 2, 2022

LAW OFFICES OF RONALD A. MARRON

18 By: /s/ Lilach Halperin

19 Lilach Halperin

20 Attorneys for Plaintiff

21 JOYCETTE GOODWIN

22 Dated: August 2, 2022

23 DTO LAW

24 By: /s/ Megan O'Neill

25 Megan O'Neill

26 Attorneys for Defendant

27 VITAMIN SHOPPE INDUSTRIES LLC
 28

1 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

2
3 Dated: August 3, 2022



4 HON. MARGO A. ROCCONI
5 United States Magistrate Judge
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EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury
 that I have read in its entirety and understand the Stipulated Protective Order that
 was issued by the United States District Court for the Central District of California
 on _____ [date] in the case of *JOYCETTE GOODWIN v. VITAMIN SHOPPE*
INDUSTRIES LLC, dba THE VITAMIN SHOPPE, Case No.: 2:22-cv-04039-JFW-
 MAR. I agree to comply with and to be bound by all the terms of this Stipulated
 Protective Order and I understand and acknowledge that failure to so comply could
 expose me to sanctions and punishment in the nature of contempt. I solemnly
 promise that I will not disclose in any manner any information or item that is
 subject to this Stipulated Protective Order to any person or entity except in strict
 compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District
 Court for the Central District of California for the purpose of enforcing the terms
 of this Stipulated Protective Order, even if such enforcement proceedings occur
 after termination of this action. I hereby appoint _____
 [print or type full name] of _____ [print
 or type full address and telephone number] as my California agent for service of
 process in connection with this action or any proceedings related to enforcement of
 this Stipulated Protective Order.

Date: _____

City and State where signed: _____

Printed name: _____

Signature: _____